

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTRAL UNIFIED SCHOOL DISTRICT
& FRESNO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080336

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT AS
TO CENTRAL UNIFIED SCHOOL
DISTRICT

On August 18, 2010, Student filed an amended Due Process Hearing Request¹ (amended complaint) naming Central Unified School District (CUSD) and Fresno Unified School District (FUSD) as respondents. FUSD filed a timely NOI on August 27, 2010. FUSD's NOI resulted in an August 30, 2010 order: 1) granting Student leave to amend; 2) finding Issues One, Two and Three of the Amended complaint sufficient as to FUSD; 3) finding Issue Four insufficient as to FUSD; and 4) finding Issue Five to not be an issue for hearing, but rather a "stay put" motion that needed to be separately filed. The August 30, 2010 order did not address CUSD because CUSD had not joined FUSD's NOI, and had not filed its own NOI at the time. On August 31, 2010, CUSD timely filed its own NOI. As discussed below, the amended complaint is sufficient as to CUSD on Issues One, Two, and Three only. Student will be given an opportunity to amend Issue Four and file Issue Five as a separate motion.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A). All subsequent references are to Title 20, United States Code, unless otherwise indicated.

² 20 U.S.C. § 1415(b) & (c).

extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁷

DISCUSSION

Here, the complaint lays out a factual history in which Student alleges that within the last two years (and even before), he resided in CUSD, but attended FUSD as an interdistrict transfer student. The factual allegations make it clear that all allegations, other than those alleged in Issue Four apply to both CUSD and FUSD at all times. Issue Five has already been determined to not be an “issue” for hearing, but instead is a motion for stay put that Student must file under separate cover. The sufficiency of the issues as to CUSD is discussed below.

In Issue One, Student alleges that during the two years prior to filing, CUSD and FUSD failed to adequately assess him in all areas of suspected disability. The complaint contains some allegations and facts alleging that Student should have been assessed in: other areas of learning disability, behavior, language and social skills. Issue One is sufficient as to CUSD.

In Issue Two, Student alleges that during the two years prior to filing, CUSD and FUSD failed to provide an appropriate program and services. The general factual allegations contain a general recitation of the program offered by FUSD, as well as psychologist recommendations for what Student’s program should look like. The allegations plainly allege that both districts denied Student a FAPE during the time he attended FUSD on interdistrict transfer. The allegations also include Student’s contention that CUSD denied

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.]; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

him a FAPE in the August 10, 2010 IEP offer. These allegations are sufficient to put CUSD on notice of the alleged denials of a FAPE. Issue Two is sufficient.

In Issue Three, Student alleges a variation on Issue One, that during the two years prior to filing, CUSD and FUSD did not adequately assess Student's need for behavior intervention and that as a result, Student should have had a BSP and counseling. Issue Three is sufficient.

In Issue Four, Student alleges that "the District" denied him a FAPE by not producing records. There is no allegation anywhere in the complaint from which it can be determined which district, CUSD or FUSD, Student is referring to. In addition, Student fails to state how records were requested, and also fails to allege a specific date the records request was made. Because it cannot be determined which District Issue Four refers to, and there are no exact dates or procedures alleged, Issue Four is insufficient.

As has already been ruled on August 30, 2010, Issue Five does not allege a denial of FAPE. Instead, Issue Five appears to be a motion for stay put because it seeks a placement while the amended complaint is pending. Because Issue Five does not allege an issue for due process hearing, it is insufficient. Issue Five is also insufficient as a "motion for stay put" because it contains no evidence in support of such a motion. Thus, to the extent Issue Five is seeking to make a motion for stay put, Student is instructed that the "motion" will only be considered if separately filed as such with supporting admissible evidence included as an exhibit.

ORDER

1. As to the CUSD NOI, Issues One, Two and Three of the amended complaint are sufficient as to CUSD under section 1415(b)(7)(A)(ii).
2. Issue Four of the amended complaint is insufficiently pled under section 1415(c)(2)(D).
3. Consistent with the August 30, 2010 "Order Granting Motion To Amend And Determination Of Sufficiency Of Amended Due Process Complaint," Issue Five of the amended complaint does not state a "problem" regarding the provision of a FAPE, but instead appears to be attempting to bring a motion for stay put. To the extent Student is attempting to bring a motion for stay put, it should be filed separately, be clearly marked as a "Motion for Stay Put" and shall contain admissible evidence of what Student contends is the stay put placement while the amended due process complaint is pending.
4. Student shall be permitted to file a second amended complaint as to both FUSD and CUSD under section 1415(c)(2)(E)(i)(II) should Student desire to remedy the

insufficiency in Issue Four.⁸ The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from August 30, 2010, the date of the order on FUSD's NOI. If Student fails to file a second amended complaint within the time allotted, the hearing shall proceed only on Issues One, Two, and Three of the amended complaint.

Dated: August 31, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.